

UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

STATE FARM LLOYDS	§	
	§	
V.	§	CASE NO: 4:05CV389
	§	
KRISTI JONES ETAL	§	

**STATE FARM'S REPLY TO KRISTI JONES' RESPONSE TO STATE
FARM LLOYDS' MOTION FOR SUMMARY JUDGMENT AND MOTION
TO STRIKE**

TO THE HONORABLE RICHARD SCHELL, UNITED STATES DISTRICT
JUDGE:

NOW COMES State Farm Lloyds, Plaintiff, and makes and files the
following reply to Kristi Jones' response to State Farm's motion for summary
judgment and in support thereof would respectfully show:

I.

ARGUMENTS AND AUTHORITIES

A. Kristi Jones' response was not timely filed.

As the Court is aware, Kristi Jones is a pro se litigant. Counsel for State Farm Lloyds mistakenly believed that Kristi Jones had registered for electronic filing with the Court following the scheduling conference held January 5, 2006. When counsel for State Farm learned this was not correct, he mailed copies of the summary judgment moving documents and accompanying motions to strike and responses on March 20, 2006. Kelly McCullough served her summary judgment documents on Kristi Jones on March 20, 2006 as well. Kristi Jones mailed her

response adopting Kelly McCullough's summary judgment response on April 4, 2006 but the document was not file marked until April 6, 2006.

Fed. R. Civ. P. 5(e) states that "the filing of papers with the court...shall be made by filing them with the clerk of court, except if the Judge may permit the papers to be filed with the judge..." Unlike state court rules, the Federal Rules of Civil Procedure do not authorize filing to be accomplished by deposit of papers in the mail. *Raymond v. Ameritech Corporation*, _____ F3d _____, 2006 WL 784954 (7th Cir., March 29, 2006).

When documents are mailed to the court, filing is accomplished only when they are actually received by the clerk or when placed in the clerk's post office box. Therefore, filings that reach the clerk's office after a deadline are untimely, even if mailed on or before a deadline. *See Meza v. Massanari*, 199 F.R.D. 576 (SD Tx 2001). While service of a motion upon a party is effective on the date of mailing, it does not constitute filing with in the contemplation of Rule 5(e). *Id.*

The file mark date on the response is April 6, 2006. The response was due to be filed on April 4, 2006. Therefore, the response was not timely filed. State Farm Lloyds therefore moves this Court to either strike the response or simply not consider it for purposes of the summary judgment record.

B. If the Court deems the response timely filed, then State Farm incorporates its replies, motions to strike and various responses addressed to Kelly McCullough.

In the event the Court determines that the response of Kristi Jones was timely filed, or extends the deadline for filing to include April 6, 2006 then State

Farm Lloyds incorporates by reference herein the following documents as applicable to Kristi Jones:

1. State Farm Lloyds' reply to Kelly McCullough's response to State Farm Lloyds' motion for summary judgment
2. State Farm Lloyds' motion to strike deposition of Kristi Jones and Defendants' responses to requests for admissions;
3. State Farm Lloyds' reply to Kelly McCullough's response to State Farm Lloyds' motion to strike

WHEREFORE, PREMISES CONSIDERED, State Farm Lloyds prays that Kristi Jones' response to State Farm Lloyds' motion for summary judgment be stricken as untimely filed. In the alternative, State Farm Lloyds incorporates by reference its replies, motions to strike, and response to motion to strike filed against Kelly McCullough as being applicable to the filings of Kristi Jones. State Farm Lloyds prays for such other and further relief, both general and special, at law or in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

By: /S/

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CERTIFICATE OF SERVICE

I hereby certify that on this the 10th day of April 2006, a true and correct copy of the above and foregoing document was sent U.S. certified mail, return receipt requested and/or electronic means to all parties of record in the above-styled and numbered cause.

/S/

MICHAEL W. MINTON